

**DISCUSSION OF THE CLEAN AIR INTERSTATE RULE (CAIR)\***  
**SIPRAC**  
**JUNE 9, 2005**

To focus our discussion and provide a common understanding, this document presents an overview of DEP's understanding of CAIR. We hope our discussion will help to identify any particular challenges or opportunities that you see CAIR offering to Connecticut.

**I. CAIR BASICS**

Of CAIR's three trading programs, only the **ozone season NOx budget program** is relevant to Connecticut.

- Connecticut is subject to an ozone season NOx budget of 2,559 tons beginning in 2009 (if only electric generating units (EGUs) participate).
- Connecticut may *only* participate in CAIR's ozone season NOx budget program. Participation in the annual CAIR NOx Budget Program or the CAIR SO<sub>2</sub> Budget Program is precluded by the lack of the appropriate findings.
- If Connecticut does not participate in the CAIR ozone season trading program, the Connecticut CAIR ozone season NOx budget serves as a binding cap on the state's emissions.

DEP has until September 11, 2006 to submit a State Implementation Plan (SIP) revision indicating how the state will comply with CAIR.

**Comparison of CAIR Model Rule Ozone Season NOx Budget Program and Connecticut's Current NOx Budget Trading Program**

The CAIR ozone season model rule closely mirrors the NOx SIP Call rule with the exception of two provisions:

- *Unrestricted banking.* The CAIR ozone-season NOx model rule will not include any restrictions on the banking of NOx SIP Call allowances (vintages 2003 through 2008) or CAIR ozone-season NOx allowances. The NOx SIP Call rules include "progressive flow control" provisions that reduce the value of banked allowances in years where the bank is above a certain percentage of the cap.
- *Facility-level compliance.* The CAIR ozone-season NOx model rule will allow sources to comply with the allowance holding requirements at the *facility* level, providing some flexibility for sources with multiple affected units. The NOx SIP Call rules required unit-by-unit level compliance with certain types of allowance accounts.

**Main Provisions of the CAIR Ozone Season Model Rule:**

- Limited Flexibility. If Connecticut participates in the CAIR ozone season budget program, DEP must adopt the complete model rule. DEP has the flexibility to modify the model rule in three respects:
  - NOx allowance allocations. To determine allocations to specific state sources, a state is not required to use the methodology that the U.S. Environmental Protection Agency (EPA) used to determine the state NOx budget. States have the flexibility to allocate allowances from their budgets as they choose.
  - Included sources. A state has the option to include all trading sources affected by the NOx SIP Call. However, such a state would need to meet all CAIR required emissions reductions from EGUs.
  - Opt-in. A state may elect to include opt-in provisions, if the provisions reflect the model rule requirements.
- Basis for State NOx Budgets. State NOx budgets were determined based on a fuel-adjusted heat-input basis. As a result, states with a large population of coal-fired units receive a larger share of

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\* 70 FR 25162 (May 12, 2005).

the total allocations, in effect rewarding units that have not made a commitment to use cleaner fuels.

- Emission Allowances.
  - CAIR ozone season NOx allowances may not be used for compliance with the annual CAIR NOx reduction requirements, and annual CAIR NOx allowances may not be used to comply with the ozone season program.
  - Pre-2009 NOx SIP Call allowances may be banked into the CAIR ozone season NOx program and used for compliance.
- Emission monitoring and reporting requirements are very similar to the NOx SIP Call program:
  - Uses 40 CFR 75; and
  - Source information management, emissions data reporting and allowance trading is accomplished through on-line systems.

## II. CAIR AND NOx SIP CALL COMPLIANCE OPTIONS

DEP is still investigating our compliance options under CAIR. Connecticut has two options to achieve the required emissions reductions:

- Meet the state's emissions budget entirely from reductions at EGUs, by requiring EGUs to participate in an EPA-administered interstate model cap-and-trade program. The NOx SIP Call small and non-EGUs may also be included; or
- Meet the state emissions budget using measures of the state's choosing, subject to EPA approval. *A state choosing to get a portion of CAIR required reductions from non-EGUs may not participate in EPA's ozone season trading program.*

EPA will cease to administer the current NOx SIP Call trading program with the 2008 ozone season and the calculation of the final true-up in November 2008. Any state that wishes to continue including its sources in an interstate trading program administered by EPA to achieve the emissions reductions required by EPA must modify its SIP to conform to the CAIR NOx Budget Program.

EPA will automatically find that a state is continuing to meet its NOx SIP Call obligation if the state:

- Achieves all of its required CAIR emissions reductions by capping EGU emissions;
- Modifies its NOx trading program to require non-EGUs participating in the trading program to conform to the requirements of the CAIR ozone season trading program, with a trading budget that is the same as or smaller than the current budget; and
- Does not modify any other existing NOx SIP Call requirements.

EPA has not indicated the exact mechanism for taking this approach and may release guidance.

## III. STATE CHALLENGES TO CAIR

DEP is analyzing issues and has not made a recommendation as to whether or not Connecticut should challenge CAIR. Two options for challenging CAIR are available, one administrative and one legal, as follows:

- ***File a request with EPA for reconsideration of CAIR.***
- ***Petition for judicial review in the Court of Appeals for the District of Columbia Circuit.***

Both a request and a petition have a filing deadline of July 11, 2005, 60 days from CAIR's date of publication in the Federal Register.

DEP has questions related to EPA's calculation of Connecticut's CAIR ozone season emissions budget. The final budget of 2,559 tons for 2009 and beyond is a reduction from the proposed budget of 4,360 tons in 2010 and about 3,633 tons in 2015. EPA used Connecticut's NOx SIP Call budget uncorrected by the three-state memorandum of understanding (MOU) with Rhode Island and Massachusetts, because Rhode Island is not included in the CAIR ozone season program and because Massachusetts has a smaller CAIR ozone budget than that under the MOU. DEP is continuing to review EPA's calculation methods, assumptions and values.

#### IV. QUESTIONS AND ANSWERS FROM EPA STAFF

What is EPA's current thinking on the acceptability of the currently approved SIP call rules and the CAIR rules the states must develop, especially in regard to the ozone season budgets?

*States will need to make two submissions: 1) a new SIP to address the new annual requirement [and presumably the new ozone season requirement]; and 2) a SIP revision to the existing SIP call program. If a state includes non-EGUs in CAIR, the state needs to modify the model CAIR ozone season trading program accordingly and replace its current SIP call rule with a state version of the CAIR program. EPA recommends that states add a sunset date to the current ozone season trading program rules to put a limit on future allowances. A sunset provision is especially important to states that allocate multiple years in advance. Such advance allocations would be meaningless.*

*CAIR SIPs must be submitted by September 2006. The revision of the existing program does not need to be done on that same date, but EPA recommends such an approach.*

Will EPA track NO<sub>x</sub> emissions from NO<sub>x</sub> SIP Call non-EGUs if such non-EGUs participate in the ozone season CAIR trading program?

*Yes. EPA plans to continue as we are now.*

Will EPA state this somewhere?

*EPA would like to give more guidance on how states participating in the SIP Call trading program transition to CAIR. Such a guidance document may be available in the near future.*

Are municipal waste combustors (MWCs) subject to CAIR?

*As finalized, CAIR would apply to any MWC with a unit attached to a generator of 25 MW or greater. In Connecticut, the three units at Mid-Connecticut and the three units at Bridgeport appear to meet CAIR's applicability requirements. MWCs are not NO<sub>x</sub> SIP Call units. In a conference call on May 4, 2005 between state regulators and EPA staff regarding CAIR's interpretation, EPA indicated that they may issue a rulemaking or guidance in the near future that would exempt MWCs from CAIR.*

Does CAIR require permit revisions for Title V sources?

*A CAIR permit is required for Title V sources and opt-in sources. A CAIR permit must be a separable part of the Title V permit. EPA envisions a CAIR permit being similar to an Acid Rain permit. EPA thinks that it is easier to create a CAIR permit and then renew the Title V permit on its regular schedule (instead of opening up all of the Title V permits at once). The exception would be Title V permits with a renewal date > 3 years. Such permits would need to be reopened because CAIR would be a new applicable requirement. A condensed version of the CAIR Model Rule must be included in the CAIR permit. According to EPA, the condensed version is a few pages long and can be found in the Model Rule.*